

1 limited issue, we have acquiesced essentially and said fine,
2 those additional limited inquires, we think, are legitimate
3 and perhaps are necessary to be resolved in order to
4 convince Your Honor that the motion for summary decision is
5 meritorious.

6 With respect to Mr. Barr, we simply see no nexus.
7 There simply hasn't been one since day one. Mr. Beckner has
8 tried repeatedly to bring him into the case. There simply
9 is no set of facts that justifies at this late date
10 reopening discovery and beginning over again.

11 JUDGE SIPPEL: All right. Mr. Beckner, have you
12 got anything to say about that?

13 MR. BECKNER: First, with respect to the late
14 date, the late date is the date that we got the Lehmkuhl
15 memorandum. Obviously, if we had received that memorandum
16 in a timely manner, we would have been able to have used it
17 in depositions.

18 The question with respect to Mr. Barr is that he
19 is speaking for the client to the Commission. You know, he
20 says in the surreply Mr. Nourain assumed grant of the STA
21 requests, which in his experience had always been granted
22 within a matter of days of filing, and thus rendered the
23 paths operational. The administration failed to notify Mr.
24 Nourain the grant of Liberty's applications was being held
25 up indefinitely as a result of the Time Warner petitions.

1 Well, the administration department may not have
2 told Mr. Nourain that, but Mr. Barr's law firm did.

3 JUDGE SIPPEL: Well, I think that the thing to do
4 is -- I mean, this is where I am coming out on this, is
5 let's go down and talk to Mr. Nourain and Mr. Price about
6 this.

7 MR. BECKNER: All right.

8 JUDGE SIPPEL: Because they are the ones, from all
9 indications thus far they are the operational -- the
10 operational point from which decisions are being made, and
11 Mr. Barr is going to be making his petitions to the
12 Commission in whatever aspect it might be based on what he
13 has learned from these individuals.

14 I mean, I could speculate now on a lot of things
15 about what went on between Mr. Lehmkuhl's memorandum and how
16 Mr. Nourain and Mr. Price might have handled that. But why
17 should I inadvertently tip somebody's hand in terms of, you
18 know, you are all know how to have to develop that. I don't
19 need to get into that.

20 MR. BECKNER: Well, of course, originally these
21 were separate motions.

22 JUDGE SIPPEL: Well, that is why I am trying to
23 sort through it.

24 MR. BECKNER: Right. And so if what Your Honor's
25 decision is is that we have an opportunity to reexamine Mr.

1 Price and Mr. Nourain, then perhaps we can reconsider
2 whether or not we need to examine Mr. Barr.

3 You can understand that from my perspective, you
4 know, Mr. Price and Mr. Nourain already having been
5 examined, I didn't know whether you were going to let me go
6 back at them again or not, and I want to get at this
7 information. I think it's important to the case.

8 JUDGE SIPPEL: Well, they have been examined on
9 Mr. Lehmkuhl's memorandum in the --

10 MR. BECKNER: No, because we didn't have it.

11 JUDGE SIPPEL: Well, let me finish my sentence.

12 MR. BECKNER: I'm sorry.

13 JUDGE SIPPEL: I think in a redacted form; is that
14 correct?

15 MR. BECKNER: We didn't have that either.

16 JUDGE SIPPEL: You didn't have anything?

17 MR. BECKNER: No.

18 JUDGE SIPPEL: Okay. All right. Well, I ruled on
19 that so I should know, but I was losing a little bit here in
20 terms of whether or not it was redacted, non-redacted and
21 all this.

22 Okay, so they haven't even been asked about this?

23 MR. BECKNER: No, sir.

24 JUDGE SIPPEL: Well, okay, I think that's the easy
25 solution. I mean, not easy in the sense that it's easy to

1 make, I mean easy in the sense that that's what should be
2 done.

3 I am going to deny the motion then to take the
4 deposition of Mr. Barr. You have the right to renew that
5 motion again after further discovery of Mr. Price and Mr.
6 Nourain with respect to the Lehmkuhl memorandum.

7 Now, the next question I have is when can that be
8 done and can that be done in time for you to add to your
9 opposition to the motion for summary decision? I am
10 assuming that's going to be in opposition.

11 MR. BECKNER: Well, let me --

12 JUDGE SIPPEL: Or can we -- you know, how are we
13 going to schedule this?

14 MR. BECKNER: Let me bring up another point that
15 was raised by the Bureau, and forgive me, Joe, but the
16 Bureau made the suggestion that the re-deposition of Mr.
17 Price and Mr. Nourain be done with the presiding judge
18 present.

19 Did I understand that right?

20 MR. WEBER: That's correct.

21 MR. BECKNER: Which, frankly, I think might be a
22 good idea. And I may, I may concur with their suggestion
23 for different reasons than the ones they have. But my
24 reasons are, is that I would expect that there is -- you
25 know, the idea, of course, is it's going to be focused on

1 the issues raised by the Lehmkuhl memorandum.

2 And what I am concerned might happen is that we
3 might get into an unresolvable dispute between the two sides
4 about how narrowly I am going to be reined in in my
5 examination. And, you know, obviously it's going to be more
6 than Mr. Price being able to say, "Oh, I didn't know a thing
7 about it," like he did in the affidavit, and that's the end
8 of the story.

9 So I think there is some virtue, frankly, if it's
10 possible, in having the examination done in your presence.
11 But I also want to make clear that in going along with the
12 Bureau's suggestion in that regard, it is not, in my view, a
13 substitute for a hearing, and for the presiding officer to
14 weigh the credibility of witnesses and so on, which you
15 would do in a hearing.

16 So I want to make clear that in agreeing to the
17 suggestion of the Bureau I am not considering that the fact
18 that you are here to supervise this deposition is a
19 substitute for your gauging the credibility of witnesses.
20 As I see it, you would be supervising the deposition to rule
21 on objections, and that would be the function, and not to
22 decide whether or not the witness is telling the truth or
23 not.

24 JUDGE SIPPEL: Well, let me hear again from
25 Liberty on this suggestion. I mean, I am open to anything.

1 I just want to hear from Liberty?

2 MR. SPITZER: Can we have a moment?

3 JUDGE SIPPEL: Sure. Let's go off the record.

4 (Whereupon, a recess was taken.)

5 MR. SPITZER: Our thinking, Your Honor, in terms
6 of its being either in front of Your Honor or not in the
7 presence of the presiding judge, we will defer to your
8 wishes on that, whatever you think is appropriate.

9 The only factors, I suppose, we would raise are,
10 one, is a mechanical, and it's a scheduling issue in view of
11 the fact that I believe the motion for summary decision, the
12 response of Time Warner is meant to be filed, I think, mid
13 August. August 13 was the date, and I think Your Honor may
14 not be available.

15 JUDGE SIPPEL: It's August 16th.

16 MR. SPITZER: Sixteenth. I'm sorry.

17 JUDGE SIPPEL: And you are right, I will not be
18 available on the 16th or before then.

19 MR. SPITZER: And so there is that issue that is
20 raised. But assuming we can overcome that hurdle.

21 We are of the view that almost of necessity, if in
22 fact you are present at a deposition, you will be making
23 credibility determinations having witnessed the demeanor of
24 the witnesses, and having done what every judge has tended
25 to do when witnessing a witness. And therefore that will

1 have an impact upon your review and determination of the
2 motion for summary decision.

3 So I guess at a theoretical level we would
4 disagree with Mr. Beckner's analysis that this is somehow
5 different from a hearing. It isn't a full-blown hearing, of
6 course, but of necessity we feel you would be in a position
7 then to make credibility determinations.

8 JUDGE SIPPEL: Well, I think, in light of the
9 pending, this really dispositive issue, that is, a summary
10 decision, in that context I would really put it almost in
11 the category of a mini-hearing, and I would want something
12 like in the nature of -- well, maybe I wouldn't call it
13 that, but really proposed findings on that aspect of the
14 case. It would supplement the papers and the motion for
15 summary decision. That why I say it's going to -- you know,
16 it's going to -- it's going to take a little more time is
17 all I am trying to say.

18 Just a minute, Mr. Beckner.

19 But on the other hand if you take the depositions,
20 the depositions get tacked in to what's going to be filed on
21 the 16th of August, you will probably get an earlier
22 resolution. Not necessarily, but you will probably get an
23 earlier resolution.

24 On the other hand, I don't know if you can
25 accommodate -- can you accommodate everybody's schedule to

1 do all that; to go out -- I'm assuming these people have
2 schedules too, Mr. Nourain and Mr. Price, and put them on
3 the record and get the transcripts, and weave it into your
4 opposition and do all that by the 16th?

5 MR. BECKNER: That's going to be a little tough,
6 to tell you the truth. And without even knowing, you know,
7 the witnesses' schedules, and August is a time when a lot of
8 people take vacations, and they may be taking vacations. I
9 don't know.

10 MR. SPITZER: We will produce the witnesses, Your
11 Honor.

12 JUDGE SIPPEL: All right.

13 MR. WEBER: The Bureau just has a slight comment
14 or a slight concern about the scheduling as well. That we
15 have a concern that if there are objections raised during
16 depositions that are taken in your absence, what would
17 happen with those objections?

18 I know you could possibly make Chief Judge Stirmer
19 or another judge available to rule on the objections.
20 However, their knowledge of this proceeding or of what the
21 issues are going to be within this deposition, which the
22 Bureau sees these depositions as being very narrow and very
23 focused. You know, we would really take a presiding officer
24 that has knowledge of the proceeding in order to be able to
25 rule on such objections.

1 And that is why, primarily why the Bureau
2 suggested that you actually preside over the depositions.
3 At the time we filed we had forgotten that you would be
4 unavailable for a few weeks, and so we now -- you know, the
5 only solution we could see is wait these depositions until
6 your return.

7 However, it's just a matter of whether you want to
8 delay them for that long of a period.

9 JUDGE SIPPEL: Well, I have already talked to
10 Judge Stirmer about this before coming in here today, and he
11 would be available for questions. But, on the other hand,
12 you know, your point is well taken also. It depends on what
13 the nature of the objections are.

14 Well, as I see it then, if I can -- well, before I
15 move further on this, Mr. Beckner, you said that you wanted
16 my participation to be a limited one, and you explained what
17 those parameters were?

18 MR. BECKNER: Well --

19 JUDGE SIPPEL: Do you still persist in that
20 position?

21 MR. BECKNER: Well, no. All I am saying is that
22 if you or any fact finder's present and you are trying to
23 decide whether or not a particular witness is telling the
24 truth, the things that go into that decision are more than
25 that particular witness's testimony that you are hearing,

1 and whatever pieces of paper he may be shown. There may be
2 other witnesses' testimony that relates to that.

3 And specifically, to bring this down to a concrete
4 level, the story that Liberty has been telling is that they
5 are just a bunch of country boys running this business off
6 the back of an envelope, and, oh, my gosh, look what
7 happened. You know, they goofed up, they had an
8 administrative foul up, and they ended up, they found
9 themselves running 15 or 19 unlicensed microwave
10 applications.

11 Well, one of the things that we would offer to
12 prove to Your Honor is that in fact they are not a bunch of
13 country boys; that they run their business in a very
14 systematic and professional business-like way. And if they
15 do that, that's inconsistent with the idea that what appears
16 to be a regularly prepared report. This Lehmkuhl memorandum
17 appears to be something that was done every year; that that
18 memorandum is simply received by the president of the
19 company and the director of engineering and pitched into the
20 waste can without being read.

21 Now, maybe that's what happened. I don't know.
22 But what I am saying is, is if you are going to be sitting
23 listening to them be deposed and trying to decide not just
24 what questions are relevant and what aren't, but whether or
25 not these people are telling the truth, there is an awful

1 lot more that's going to go into that decision than what you
2 are hearing at that particular moment, and that's why I
3 really don't think that that's a proper way to proceed in
4 terms of -- and, you know, we would certainly object to a
5 summary decision being granted on the basis of a presiding
6 officer's evaluation of the credibility of even one witness.
7 I mean that, to my mind, sounds like something that you do
8 after a hearing where you hear all the witnesses and all the
9 evidence.

10 I mean, the hearing is a seamless whole, the
11 testimony of different people interlocks, different
12 documents and so on. And on that basis you or a jury makes
13 a decision as to who is telling the truth and who isn't and
14 what happened.

15 Now, I think it's awfully hard for anyone to do
16 that about one witness that you are just hear in a vacuum,
17 and that's really all that I meant in terms of your limited
18 participation.

19 JUDGE SIPPEL: Well, it just seems to me that, you
20 know, again, I don't want to -- I don't want to drive
21 anybody unreasonably in terms of putting this -- getting
22 this case in a position to decide. But if the witnesses are
23 going to be made available, it would seem to me that, and
24 you are right, I mean, it's going to be difficult for me to
25 truly assess credibility in that broad context without being

1 more familiar with the evidence and how it will be developed
2 with other witnesses. But I think I can get a pretty good
3 idea.

4 But I guess where I am leaning is towards taking
5 the depositions and then incorporating those in your
6 opposition papers unless I could -- unless I could see that,
7 and I am willing to listen to more about this in terms of
8 what could I do if -- if we could hear it towards the end of
9 August, and as I said, if that's the case, and I certainly
10 would want to actively participate in the proceeding, the
11 same way I would if this were a hearing, except that it
12 would be a mini-hearing, obviously. It would not last
13 nearly as long, and candor is always an issue, I mean,
14 particularly if it's done before a presiding judge. That's
15 always going to be there.

16 But my ability to analyze testimony under these
17 circumstances in light of that, it presents a difficulty,
18 but --

19 MR. BECKNER: The only thing I would suggest, Your
20 Honor, and, you know, obviously everyone wants to get this
21 wrapped up, is to let the date that our paper's due slip a
22 couple of weeks, and immediately upon your return we take
23 the depositions of -- you know, in your presence, of Mr.
24 Price and Mr. Nourain, and then, you know, we file the paper
25 that way.

1 I mean, I am just concerned, and I think the
2 Bureau is too, and it was their idea. I give them credit
3 for it. That in the absence of a presiding judge to rule on
4 objections, the effect of the deposition maybe somewhat
5 inconclusive, because, I mean, I am probably going to want
6 to go a little bit outside the immediate document to ask
7 questions, and Mr. Spitzer and Mr. Begleiter are both
8 experienced trial lawyers, they are going to do their best
9 to keep me from doing that, as is their -- that's their job.

10 JUDGE SIPPEL: Well, see, if that's it, I mean, if
11 the whole idea is to have me in here as a referee because
12 the lawyers can't get things straight amongst themselves, I
13 mean, I don't think that that makes -- to me that doesn't
14 make any sense in terms of deferring.

15 MR. BECKNER: Okay.

16 JUDGE SIPPEL: If things really get that serious,
17 as I say, Judge Stirmer will be available by phone, and you
18 can get it straightened out. But if it's something that --
19 you know, if we are going to get into nuances, that is
20 something that if I were participating right here at the
21 hearing, you know, I would be pursuing those lines if I
22 wasn't clear on it. And that's not going to happen.

23 But on the other hand, I am not -- you know, where
24 do you make the cut?

25 What we have, what is being presented to me is a

1 motion for summary decision, and what is lacking in terms of
2 being able to make that resolution is, as I have said it
3 right here, is that there is some serious questions that the
4 Lehmkuhl memorandum has raised that is going to require some
5 testimony.

6 Now, whether that's going to do it, you know, I
7 don't know. I mean, the downside would be from the
8 standpoint of getting this case resolved is that summary
9 decision gets denied and we go into -- you know, we go into
10 a full-blown hearing, in which case this testimony is going
11 to be repeated again, or it could be repeated again.

12 So why waste the time of me sitting here and
13 refereeing something in which I am probably going to be
14 inclined to go beyond that and start participating in this
15 examination if I'm not getting answers that I think I should
16 be getting, and, you know, we have something a little bit
17 more than a deposition. We're going to take more time.
18 It's going to delay a decision. And I am not convinced that
19 you can't take a good deposition of these witnesses based on
20 length really.

21 MR. BECKNER: I am not convinced that I can't
22 either.

23 MR. SPITZER: Your Honor, maybe this is
24 unnecessary, maybe it's just the lawyer's desire to talk. I
25 don't think that we have had the sorts of difficulties

1 controlling the scope of the depositions thus far in this
2 proceeding. I think, frankly, the number of times we have
3 needed to appeal to Your Honor has been reasonably limited.

4 JUDGE SIPPEL: Virtually none.

5 MR. SPITZER: Virtually none.

6 JUDGE SIPPEL: Or none, none in terms of -- there
7 has always been a question of scheduling or something else
8 or getting a witness, but it's been absolutely zero.

9 MR. SPITZER: So I think we will be able to work
10 this out. I also just wish to state for the record I don't
11 think there is any evidence in the record that would suggest
12 that there was any knowledge of premature service before the
13 late April date that has been testified to by the witnesses
14 thus far. There is this memorandum, which is why we now
15 say, yes, let's ask these questions to clarify that record.
16 But there is nothing that Mr. Beckner can point to to say
17 there was knowledge on the part of any of the individuals
18 who has denied that knowledge.

19 JUDGE SIPPEL: I'm sorry. I don't understand what
20 you are saying. Knowledge on whose part about what?

21 MR. SPITZER: Knowledge on the part of either Mr.
22 Price or Mr. Nourain or Mr. Lehmkuhl, the three individuals
23 with respect to whom we have essentially consented to have
24 the additional depositions taken; that they had actual
25 knowledge of premature service before the late April date

1 that has been testified to, or anybody else for that matter.

2 JUDGE SIPPEL: Well, that does -- it still
3 presents a problem because, you know, if there is this
4 serious question of credibility on something like that, I
5 mean, that's really where live testimony before a presiding
6 judge or whatever needs -- it's the only way that you can
7 flesh that out.

8 But if he has got a legitimate explanation, if
9 these documents are put in front of these witnesses, and
10 they have -- you know, they tell their story, or they tell
11 their story, and you are going to have a lot of
12 opportunities to go back at them and say, well, what about
13 this, what about that, what about this, what about that.

14 And as I take it, what Mr. Begleiter and Mr.
15 Spitzer have said with respect to these previous depositions
16 is my experience.

17 Now, what about from your side? Have you been
18 getting any serious opposition to what you would say to be
19 legitimate questions?

20 MR. BECKNER: No. I mean, I don't dispute Mr.
21 Spitzer's characterization about the way the depositions
22 have gone. I mean, obviously, if I felt that I was not
23 being allowed to ask questions that I wanted to ask, you
24 would have heard from me.

25 JUDGE SIPPEL: I'm sure I would have. I'm sure

1 that's the case.

2 MR. BECKNER: And you didn't. And no, I agree.
3 So, fine, let's go ahead and take the witnesses'
4 depositions, you know, as soon as it can be arranged.

5 JUDGE SIPPEL: Fine.

6 MR. BECKNER: And we will file our paper on the
7 date that it was originally scheduled to be due, and our
8 filing will incorporate, you know, whatever -- whatever
9 appears from these witnesses' testimony that's material.

10 JUDGE SIPPEL: Do you have any problem with that,
11 Mr. Weber? I mean, I know that's not your 'druthers.

12 MR. WEBER: Yes, we certainly have no problem with
13 that. I would just like to raise one other point to be
14 considered.

15 The primary reason behind our requesting that the
16 depositions be in front of you were not only -- were not so
17 you could serve as referee to any raised objections. But
18 also so you could satisfy your own curiosity. While it is
19 true that Time Warner's motion to enlarge did raise some
20 questions, we wanted to be sure that those questions alone
21 didn't lead you to deny the motion for summary decision, and
22 that you could have questioned the witnesses and satisfied
23 your own concerns at the same time.

24 And obviously at the end of satisfying your
25 concerns if you became more concerned, then obviously, you

1 know, it would be proper for you to deny the motion for
2 summary decision. And if the Bureau became more concerned,
3 we would withdraw our support.

4 But I just -- we wanted to be sure that you would
5 have the opportunity to look into your own questions you may
6 have on the issue.

7 JUDGE SIPPEL: Well, let me see if I can give you
8 some assurance on this. What's been given to me so far is
9 just the one leg of a motion for summary decision, and it's
10 a pretty hefty leg. And I have had some other pressing
11 things in cases that I have been working on, plus these
12 motions and whatnot. So I really haven't focused very
13 deeply into that motion. Not only for those reasons, but
14 also because there hasn't been any opposition filed yet.
15 And so it's premature for me to get -- to get that deep into
16 what's in there because, you know, I don't want to start
17 forming predispositions based on just seeing one side.

18 But having said that and recognizing what we are
19 talking about here today, the significance, that is, of
20 getting these questions clarified, if I go through all of
21 this process and I still have questions, I'm going to come
22 back and I am going to tell you that, and I am going to want
23 to hear some testimony.

24 I mean, even if I am not prepared perhaps -- this
25 scenario is a distinct possibility. I don't have enough

1 information to decide the motion, so I want to hear more
2 testimony. I can do that. It doesn't necessary mean that I
3 am going to have a hearing or deny the motion.

4 On the other hand, I mean, it could be that. I
5 mean, I could get to that. Or what I will probably end up
6 doing will be having an argument on it before I make the
7 decision, because I just have the -- I have the darndest
8 feeling that this thing is going to come down to questions
9 of whether or not there is a substantial -- that there
10 remains a substantial question that somebody is lying to the
11 Commission. May not.

12 I am not trying to jump ahead of myself, but I
13 kind of get the feeling if that's where this is, that's
14 going to be the tough part of this decision.

15 And if that's the way I feel, and I think that I
16 can clear it up with testimony, I will do it, I mean, in my
17 mind. And if I can't, we will go to hearing.

18 MR. BECKNER: Your Honor, I just have one other
19 remark. Mr. Harding reminded me of something else that --
20 and this is a request that I apologize to everyone for
21 making late because we are now talking about this, the
22 earlier motion we filed.

23 In our paper we mention these weekly reports that
24 were prepared by Liberty staff and we'll discuss at the
25 staff meeting. In the original document production Liberty,

1 I think at the time quite properly said, look, don't make us
2 produce the entire volume of every weekly report for a
3 period of whatever it was, three years. And the Bureau
4 said, okay, you can produce a sampling of them at intervals,
5 and that's what was done. And I certainly have no problem
6 with that.

7 But I think now, given that this issue has been
8 raised, if we could have the reports that were done in the
9 week of -- all the reports that were done in the week of
10 February of 1995, and maybe the first week of March, I think
11 that would be important because those reports were done at
12 the same time as the Lehmkuhl memorandum.

13 JUDGE SIPPEL: That shouldn't be much of a big
14 deal. You got those?

15 I'm sorry, Mr. Spitzer.

16 MR. SPITZER: That's fine.

17 JUDGE SIPPEL: I was looking at Mr. Begleiter.

18 MR. SPITZER: The only issue, just so Your Honor
19 understands, was that these reports had information on them
20 with respect to many buildings not at issue in the HDO, and
21 it was a matter of redacting the other information, and that
22 would have been a vastly time consuming operation.

23 So we are more than happy to give the reports at
24 issue to Mr. Beckner and the Bureau. I am just wondering if
25 we find it more difficult to redact them, maybe we can just

1 have an understanding that those reports would be kept to
2 lawyers' eyes only or some such so that because there was
3 confidential information pertaining to non-HDO buildings.

4 JUDGE SIPPEL: Okay.

5 MR. SPITZER: But I imagine we can work something
6 out, Your Honor.

7 JUDGE SIPPEL: Sure. And what period of time
8 would that be? These are weekly reports for what period of
9 time?

10 MR. BECKNER: February and March.

11 JUDGE SIPPEL: February and March of 1995, that
12 would cover it totally.

13 JUDGE SIPPEL: All right.

14 MR. BECKNER: So we are going to get the complete
15 report, Eliot, and we will agree not to --

16 MR. SPITZER: Fine.

17 MR. BEGLEITER: Well, it should be clear that
18 those reports -- we haven't seen them -- but they will
19 probably show the buildings that are on the list as being in
20 those reports. We're not hiding that, Your Honor.

21 I think the main point, if I can just give
22 Liberty's position, is that we have gone through a lot of
23 discovery. We have had more than a dozen depositions. We
24 have had yay many pages of transcripts. We have had 16,000
25 pages of documents, and there is no testimony, Your Honor,

1 that implies that the people in Liberty knew before the end
2 of April. This has been a consistent position since early
3 on.

4 And I think that -- I understand Your Honor's
5 feeling about candor and how any candor -- how you can make
6 any summary decision on a question of candor. But in fact
7 those decisions are made in the absence of contradictory
8 evidence.

9 JUDGE SIPPEL: All right. Well, we will find out,
10 we will find out. You know, I am picking up -- I have to
11 rely on a lot of what the Bureau is saying because they are
12 much closer to this than I am, and so I can't do justice to
13 this case by just passing over something like this. And I
14 certainly can see the significance of what's in Mr.
15 Lehmkuhl's memorandum. I mean, I certainly can focus on
16 that.

17 MR. BEGLEITER: Your Honor, I think it's -- we
18 disagree. We think it doesn't have that great a
19 significance because we have already conceded, Judge, that
20 there are many ways that Liberty could have known, should
21 have known from various other ways of what was going on. I
22 mean, that was our cards from the beginning. If we had --
23 if they had watched their P's and Q's, we wouldn't be here
24 today. We have conceded that, and that's why we have
25 offered to pay a very large, a very large forfeiture.

1 That's quite different from saying because you
2 could have and should have that in fact you knew something.
3 And there have been probing questions. Mr. Beckner did an
4 excellent job, since we're giving kudos, of asking a lot of
5 very probing and insightful questions of Mr. Price. And Mr.
6 Price, if you recall, Mr. Beckner had him on, I think, close
7 to 10 hours; maybe I am off by an hour or so, maybe 9. Mr.
8 Holt had him. Mr. Beckner had him. Mr. Ray was on for a
9 full day. And nobody came up with anything that would show
10 that these people weren't telling the truth.

11 And if I may, this is a little bit of an aside,
12 the company would have to have been totally suicidal to have
13 known in February 1995 that they were putting on -- they
14 were activating buildings when Time Warner, one of the
15 Fortune 100 company that says that it's the largest
16 entertainment company in the world, a company that has been
17 watching Liberty, a company that Liberty knows it's being
18 watched by Time Warner.

19 I mean, Your Honor, when -- testimony has been in
20 there. When a -- when a customer changes from Time Warner
21 to Liberty, Time Warner knows it. I mean, this is not a
22 fact that you would, in the ordinary course, hide. But more
23 than that, Your Honor, Time Warner already had two months by
24 February, or close to two months, starting in January, the
25 first week in January, of petitions to deny with the FCC,

1 with a continuing pattern of petitions to deny being filed
2 by Time Warner.

3 And to think that in the face of knowing that Time
4 Warner wanted to deny licenses that anybody who was not
5 totally a lunatic would go ahead and activate knowingly 13
6 buildings, or 15 buildings without license is beyond, beyond
7 any reason.

8 JUDGE SIPPEL: Well, you are making me feel like I
9 am missing something and I'm not seeing this. I am going to
10 let Mr. --

11 MR. BEGLEITER: I don't want to give you that. I
12 withdraw my statement.

13 JUDGE SIPPEL: I am going to let -- Mr. Beckner is
14 going to do it again for you, and I am not going to limit, I
15 am not going to put the limitations on the scope of your
16 questions on what Mr. Weber laid out in his opposition
17 papers. I mean, that's a good start, but you have got the
18 discretion as you take with any other deposition in terms of
19 asking questions, within reason.

20 MR. BEGLEITER: Does that mean asked and answered
21 questions could be asked and answered again?

22 JUDGE SIPPEL: Well, no, that's not the case
23 unless -- again, unless it has to be done in context because
24 these facts may alter those questions and answers. There is
25 going to be a little bit -- you know, I understand what you

1 are getting at, but I am relying on the past track record in
2 this case that it's going to get done, and I am sure -- do
3 not be bothering Judge Stirmer with -- and I am sure you
4 won't. I mean, this is why I feel very comfortable doing it
5 this way.

6 MR. BEGLEITER: My concern, Your Honor, is that we
7 will be getting into areas that are really unrelated to the
8 Lehmkuhl memorandum, but is simply areas that Mr. Beckner
9 has decided in light of the motion for summary decision, or
10 just in light of reviewing all the evidence of things that
11 he would like to have answered, which is essentially
12 reopening, for all purposes, discovery.

13 JUDGE SIPPEL: No.

14 MR. BEGLEITER: That is something I --

15 JUDGE SIPPEL: No, these are questions that -- no,
16 these are questions being basically Mr. Weber laid it out in
17 his opposition to the motion for summary decision, and that
18 presents the framework. But I say within that framework
19 there can be questions asked. It's really -- I mean, I am
20 not going to try and paraphrase it. But you have got
21 information in the Lehmkuhl memorandum that raises questions
22 that have not been answered before.

23 Now, whether the question may have been asked
24 before --

25 MR. BEGLEITER: That's fine, Your Honor.